

REMARKS

Claims 1-4, 6, 7, 9-11, and 14-19 are pending in the application and are at issue.

Claims 1-4, 6, 7, 9-11, and 14-19 stand rejected under 35 U.S.C. §103 as being obvious over WO 03/104301 (WO '301), having an English translation of U.S. Patent Publication No. 2005/0165208. This is the sole rejection of the claims. Applicants traverse this rejection because WO '301 is an improper reference to cite against the present claims.

The reasoning why WO '301 is not available to cite as a reference against the present claims was fully set forth in the Response After Final Action Under 37 C.F.R. §1.116, filed June 22, 2009.

In response, the examiner issued an Advisory Action on July 9, 2009, stating the following as to why the application is not in a condition for allowance:

"Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not made of record in accordance with 37 CFR 1.55. See MPEP §201.15.

In those cases where the applicant files the foreign papers for the purpose of overcoming the effective date of a reference, a translation is required if the foreign papers are not in the English language. When the examiner requires the filing of the papers, the translation should also be required at the same time. This translation must be filed together with a statement that the translation of the certified copy is accurate"; and

"If the papers are not in the English language and there is no translation, the examiner may reject the unpatentable claims and at the same time require an English translation for the purpose of determining the applicant's right to rely on the foreign filing date [see MPEP 201.15]."

To overcome the examiner's reasoning for maintaining the rejection of the pending claims, applicants submit an English language translation of priority German patent application No. 10 321 450.4, with a certification that the translation is accurate.

Therefore, in summary, the cited WO '301 is not a proper reference to cited against the present claims because:

The PCT application leading to WO '301 was filed on June 10, 2003. WO '301 published on December 18, 2003.

The present application is the U.S. national phase application of PCT/EP2004/007078, filed on June 30, 2004, which in turn claims the benefit of earlier filed German patent application No. 10 331 450.4, filed July 10, 2003.

Because WO '301 published (December 18, 2003) after the filing date of the Germany priority application (July 10, 2003) and less than one year before the filing date of PCT/EP2004/007078 (June 30, 2004), WO '301 can be removed as a reference by showing applicants' possession of the previously claimed invention prior to the December 18, 2003 publication date of WO '301.

Applicants previously submitted a statement that the translation of PCT/EP2004/007078 from German to English is a true and complete translation. PCT/EP2004/007078 discloses the same subject matter of German priority application No. 10 331 450.4, wherein only corrections to minor typographical errors were made. A certified translation of translation of DE 10 331 450.4 is submitted with this Request for Continued Examination to show that priority application DE 10 331 450.4 fully supports the present claims. Therefore, WO '301 is not available to cite as a reference against the present claims.

Accordingly, it is submitted that WO '301 is an improper reference and should be withdrawn, and that the rejection of claims 1-4, 6-7, 9-11, and 14-19 under 35 U.S.C. §103 as being obvious over WO '301 should be withdrawn.

Because all outstanding issues have been resolved, it is submitted that all pending claims are in a form and scope for allowance. An early and favorable action on the merits is respectfully requested.

Should the examiner wish to discuss the foregoing, or any matter of form in an effort to advance this application toward allowance, the examiner is urged to telephone the undersigned at the indicated number.

Dated: August 12, 2009

Respectfully submitted,

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